IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.706 OF 2002

M/s.Geeta Lifters .. Appellant.

V/s.

Asstt. Commissioner of Income Tax
12(3), Mumbai .. Respondent.

Mr.Vipul Joshi with Sameer Dalal for the appellant.

Mr.R.V. Desai, Senior counsel with V.H. Kantharia i/b. P. Kapur for the respondent.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 21ST SEPTEMBER, 2004.

P.C. :

Heard.

2. The Income Tax Appellate Tribunal while considering the matter observed thus :

> "From the perusal of above assessed income of the assessee for various asstt. years it appears that the year in question was a year of extraordinary profits for the assessee. For the year under consideration, if we do not consider the depreciation for the crane in question, the income of the assessee was assessed at

> Rs.14,70,698/-. It can be said that in view of the extra-ordinary profits, the claim of depreciation was made by the assessee despite the facts that it did not qualify for claim of depreciation thereof. There is no much force in the contention raised on behalf of assessee that it acted bonafidely by claiming depreciation in the original return. For the reason that assessee is engaged in this business for last many years and it cannot be said that assessee was not known to the fact that unless a particular asset is used for the particular business, the depreciation is not allowable. The default of concealment is connected with the filing of original return. It cannot be cured with the subsequent act by filing revised return unless it is proved beyond doubt that the revised return is a result of bonafide error committed while filing the original return. There is no material to indicates that while filing original return, the assessee was under bonafide belief that depreciation claimed is allowable to the assessee as the depreciation claimed is major part of the expenditure which reduced the income of the assessee to a great extent and could save huge tax liability in the hands of firm as well as in the hands of partners."

3. The Income Tax Appellate Tribunal went on to observe thus :

> "In the present case assessee furnished an explanation which is not substantiated. The assessee also fails to prove that explanation furnished is bonafide. In this view of the situation, the penalty has rightly been imposed on assessee u/s.271(1)(c)."

4. The consideration of the matter by the

Income Tax Appellate Tribunal is in accord with the legal provisions, particularly the explanation (1) to Section 271(1)(c) of the Income Tax Act.

5. The order does not suffer from any legal infirmity. No substantial question of law arises in this appeal. The appeal is dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)